

FFWPU Europe and the Middle East: Japanese Government Prosecutors Win 99.9% Of Cases

Knut Holdhus
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Judges at the Court of Appeals in Okinawa, Japan 1st April 1951

Why do government prosecutors always win? Does Japan Have an Independent Judiciary? Implications for the Unification Church Dissolution Case

Scholars have noted that, while proclaimed by the Constitution, the independence of the Japanese judiciary is in fact limited by the government's role in appointing and promoting judges.

by Dr. Michael Mickler



Dr. Michael Mickler

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The Constitution of Japan guarantees that "all judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws" (Article 76). Japan's judges have adequate compensation, regular promotion, and protections against removal. In practice, they are regarded as being honest and professionally competent. They enjoy high levels of public trust.

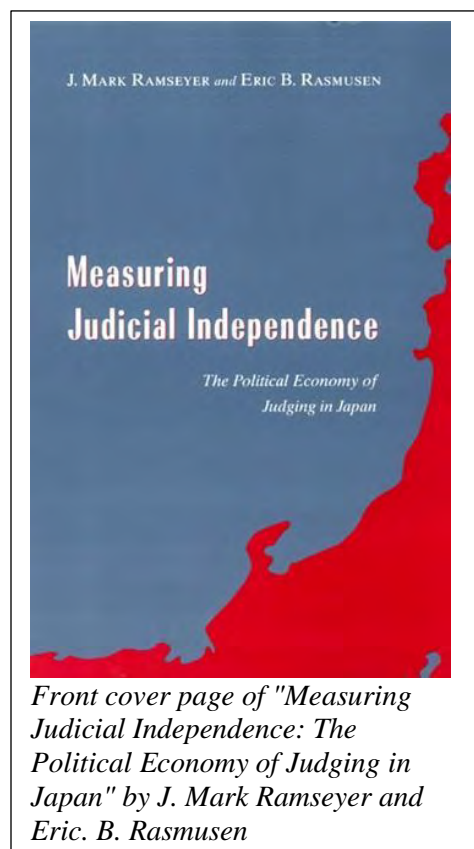
However, questions persist as to the judiciary's independence, particularly in its restraint toward actions of Japan's executive and legislative branches. Even in accounts extolling its virtues, Japan's judiciary is recognized as being "cautiously conservative."

There are several reasons for this. Keiichi Muraoka, in "Independence on the Bench: Political and Bureaucratic Constraints on the Japanese Judiciary," lists Japan's judicial appointment process and hierarchical career system as factors. Notably, the Japanese Constitution gives the ruling party's cabinet the authority to appoint judges to the Supreme Court and lower courts. According to Muraoka, "This diminishes judicial autonomy to a considerable degree by enabling the ruling parties at the time to leverage their power of appointment to 'reward' with promotion [...] judges who show deference toward government policies and 'punish' those who are less permissive of executive authority."

Japan's hierarchical career system further contributes to "judicial conformity and conservative-minded benches." Most judges begin their careers upon graduation from the court-administered Legal Training and Research Institute (LTRI). Muraoka notes that new judges come to the bench with next to no practical legal experience" and a "powerful judicial administration keeps a close watch over their performance." Moreover, "Transfers are routine, resulting in significant discrepancies in positions and in salaries." According to Muraoka, "'homogenizing' of the Japanese courts casts a dark shadow over judicial independence."

Harvard Law School Professor J. Mark Ramseyer in a number of articles later published as "Measuring

Judicial Independence: The Political Economy of Judging in Japan," argued similarly. He highlighted the "urgent need for reforms that align with the actualities of judiciary independence."



Front cover page of "Measuring Judicial Independence: The Political Economy of Judging in Japan" by J. Mark Ramseyer and Eric. B. Rasmusen

Apart from political and bureaucratic constraints, several anomalies in Japanese judicial practice inhibit transparency. For example, Japan does not utilize juries and proceedings are private. In fact, disclosure of deliberations can result in severe penalties. In addition, as widely reported, government prosecutors win 99.9% of cases and 98% of appeals. As a consequence, a presumption of guilt culture is prevalent.

All of this has implications for the [Unification Church](#) (UC) dissolution case.

Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT), an organ of the executive branch with jurisdiction over registered religious organization, brought the case against the [UC](#), requesting the Tokyo District Court to issue an order of dissolution under Japan's religious corporation law. In addition, Prime Minister Fumio Kishida, head of the ruling Liberal Democratic Party (LDP), announced the investigation into the [UC](#) and in a departure from precedent, stated that an order to dissolve the [UC](#) could be based on civil rather than criminal violations.

Outrage against the [UC](#) exploded following the assassination of former PM Shinzo Abe on July 8, 2022. The assassin, 41-year-old Tetsuya Yamagami, told investigators that he shot Abe in retaliation for Abe's support of the [UC](#) and that he held a

grudge against the church over his mother's donations more than twenty years previously. Japanese media subsequently exposed ties between the [UC](#) and the LDP, causing the ruling party to disavow any further relationship.

Various human rights activists vigorously opposed treatment of the [UC](#) in public statements, press conferences, petitions, lawsuits and multiple articles, including extensive coverage in "[Bitter Winter](#)," but as yet to little effect. An attorney for the [UC](#) provided data showing that not a single case for refund of [UC](#) donations has been filed in the last seven years and that other Japanese religious groups that had committed malicious crimes, including group assaults and murder, were not pursued by the government by seeking orders to dissolve.



Katrina Lantos Swett

Suzan Johnson Cook

Left: USCIRF Chair Dr. Katrina Lantos Swett in Oslo 8th Nov. 2014 - Right: Suzan Johnson Cook in July 2023

Suzan Johnson Cook, former U.S. Ambassador at Large for International Religious Freedom and Katrina Lantos Swett, former chair of the U.S. Commission for International Religious Freedom, likewise [expressed concern](#) that "Dissolving a religious organization that has not been found guilty of any crime would taint the image of Japan as a country committed to democratic principles."

The Tokyo District Court's judicial independence will be put to the test in separating legal arguments from political pressure and public opinion.

The judges may find a way forward by exercising a feature emphasized in Japanese courts known as wakai, i.e., settlements by mutual agreement of the parties, with no loser or winner.

On November 7, 2023, [UC](#) President Tomihiro Tanaka announced plans to allocate up to 10 billion yen (\$67 million) to the Japanese government to cover possible compensation for former believers and their families for damage they claim to have suffered. He apologized for "circumstances that led to the situation" but clarified that "the apology did not equate to an acknowledgment of wrongdoing by the [church](#) toward former believers." What impact, if any, the offer will have on the government's dissolution request, which Tanaka termed "impossible to accept," is an open question.



Tomihiro Tanaka, chairman of the [Family Federation](#) of Japan, at press conference in Tokyo 7th Nov. 2023

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Award-winning author reveals how the Japanese Prime Minister without even realizing it opened a veritable can of worms

Tokyo 4th January 2024 – Published as an article in the Japanese newspaper Sekai Nippo. Republished with permission. Translated from Japanese. [Original article](#)

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Part 5 of an interview with Masaki Kubota (窪田 順生), author of "Infiltrating the Former Unification Church"

by Seisaku Morita (森田 清策)

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– **Various media polls show that 70 to 80 percent of the public supports the Ministry of Education, Culture, Sports, Science and Technology's request for an order to disband the Family Federation for World Peace and Unification (formerly the Unification Church).**



The logo of the Sekai Nippo

This is probably the result of the mass media's incitement of hatred against the former **Unification Church**. Even though people have not been harmed or had any unpleasant experiences, they believe media reports and have an image of the **religious organisation** as "horrible". As I have already pointed out, the people in the media who are involved in reporting, cover neither the **religious organisation** nor its active believers properly. There is a problem with the provider of the information.

In addition, Japanese people are now very serious about money issues, and there is strong opposition to tax increases. A growing number of people insist that religious corporations that receive preferential tax treatment, should be made to pay taxes, and that their privileged position should be removed.

The dissolution order is however not a palatable deal that simply means paying taxes one was previously exempted from. For a religious corporation, it's a "death sentence". The public supports it without considering that it infringes on the freedom of religion.

– **In addition to the media, politics is also largely to blame.**



Fumio Kishida 14th July 2022. Photo: 首相官邸 / Wikimedia Commons. License: [CC Attr 4.0 Int](#). Cropped

The person who bears the heaviest responsibility for it is Prime Minister Fumio Kishida. Even in capacity of being the "leader of the Liberal Democratic Party", and certainly for a prime minister, it was unbecoming to declare that the **religious organization** was "anti-social" and announce that he would "sever ties" with it. This gave the go-ahead to apply for a dissolution order.

When my book-publishing project was proposed, many executives of publishing companies expressed concerns and declined. This was because the state had requested the dissolution of the **Unification Church** on the grounds that it was an "antisocial group". Even the book "Infiltrating the Former Unification Church" is not being advertised. The trigger for this series of events was not so much the media, but Prime Minister Kishida, who, fearing criticism from the media, rashly declared to have "cut ties".

When Shinzo Abe was Prime Minister, the media took an anti-authorities stance, saying "We will continue to pursue the Moritomo Gakuen (森友学園) and Kake Gakuen (加計学園) issues (the Morikake problem – モリカケ問題)" [*Scandals where it was claimed that government officials had given preferential treatment to school operators with ties to the prime minister*]. In reality, the media should also take an anti-authorities stance against Prime Minister Kishida and verify his declaration of having severed ties, but they depend on information from officials, so they cannot complain about the policy decided by the government.

– **Did Prime Minister Kishida make a "declaration of cutting**



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all ties" without understanding what it meant, and initially not consider requesting a dissolution order?

He probably didn't think deeply about it. I think the worst disaster that came from doing it on the spur of the moment was the request for a dissolution order. I don't know if he did it because he was told to by those around him, but I think it's not possible that he had any strong intention to dissolve [the [Family Federation](#)]. However, the declaration of having cut all ties and the request for a dissolution order left behind a huge negative legacy. The believers have been reduced to beings who do not need to be heard.

The Liberal Democratic Party (LDP) and the International Federation for Victory over Communism (IFVOC) fought elections together for over 50 years. When the LDP was pressed by a Communist Party member in the Diet in 1987 to cut ties with the IFVOC because "[Sun Myung Moon](#) (the founder of the former [Unification Church](#)) is behind the movement to enact the Anti-Espionage Law", Yasuhiro Nakasone (中曽根康), prime minister at the time, firmly defended the line of "respecting freedom of thought and religion to the fullest".



Yasuhiro Nakasone (1918-2019), Japanese Prime Minister 1982-1987. Photo: [首相官邸ホームページ / Wikimedia Commons](#). License: [CC Attr 4.0 Int](#)

Interacting with people from religious organizations is not a bad thing. However, when the Liberal Democratic Party (LDP) broke that line by "cutting ties", it landed itself in trouble. While receiving support from various religious organizations and groups, Prime Minister Kishida, without even realizing it, opened a Pandora's Box by declaring a severing of ties with a specific religious organisation without any legal basis.

Interviewer: Seisaku Morita

Continued in [part 6](#) and [part 7](#).

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Featured image above: Pandora trying to close the box that she had opened out of curiosity. At left, the evils of the world escape. Based on a work by Frederick Stuart Church (1842-1924). Photo: [Wikimedia Commons](#). [Public domain](#) image

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Masaki Kubota (窪田順生) is a non-fiction writer who has contributed to weekly and monthly magazines. He has also



worked first as a producer, then as an advisor for TV-documentaries. He is journalist for a weekly magazine and a newspaper, and editor of a monthly magazine. In addition, he works as a media consultant, having conducted over 200 public relations consultations and media training sessions (training on how to handle interviews).

His books include

- "Spin Doctor – Techniques of Information Manipulation Used by Professionals Who 'Hush up Bad Information'" (Kodansha Alpha Bunko – 2009), which deals with Japan's political and corporate public relations strategies, and
- "14 Stairs – Reportage on the Niigata Girl's 9 Years and 2 Months Confinement Case" (Shogakukan – 2006), which won the 12th Shogakukan Non-fiction Award for Excellence.
- His new book, "Infiltrating the Former Unification Church – the Complete Story of the Request for a Dissolution Order and the Deepest Secrets of the 'No Good Coverage'", is currently on sale.



The front cover of 'Infiltrating the Former Unification Church' (潜入旧統一教会「解散命令請求」取材NG最深部の全貌 - Tankobon Softcover, Nov. 2023), by Masaki Kubota (窪田順生).

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